

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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UNIVERSAL-POLYGRAM  
INTERNATIONAL PUBLISHING, INC.;  
PIERCEPTISONGS; QUARTET MUSIC,  
INC.; RANGE ROAD MUSIC, INC.;  
JOBETE MUSIC CO., INC.; HULEX  
MUSIC; FRANK MUSIC CORP.;  
IMPULSIVE MUSIC; and ROBERT LAMM  
d/b/a LAMMINATIONS MUSIC,

Case No. 09-CV-0576 (PJS/RLE)

ORDER

Plaintiffs,

v.  
PRAIRIE BROADCASTING COMPANY;  
G & C VENTURES, LTD.; and GENE  
SULLIVAN,

Defendants.

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Mary Andreleita Walker and Felicia J. Boyd, FAEGRE & BENSON LLP, for plaintiffs.

This matter is before the Court on plaintiffs' motion for a default judgment. The Court heard argument on the motion at a hearing on July 30, 2009. Defendants did not appear. After the hearing, and at the Court's request, plaintiffs filed a supplemental declaration from Hugo Delbove that provided additional factual support for plaintiffs' motion. Suppl. Delbove Decl. [Docket No. 31]. The Court grants the motion for the reasons stated on the record at the July 30, 2009 hearing, and based on the factual findings and conclusions of law set forth below.

Defendant Prairie Broadcasting Company operates two radio stations, KEYL in Long Prairie, Minnesota, and KXDL-FM in Browerville, Minnesota. Defendant G&C Ventures, Ltd. owns and controls Prairie Broadcasting, and defendant Gene Sullivan is the executive in charge

of G&C Ventures. Up until June 3, 2008, stations KEYL and KXDL-FM were licensed by ASCAP, an association to which plaintiffs belong, to broadcast copyrighted work in ASCAP's repertory. But KEYL's and KXDL-FM's licenses from ASCAP lapsed, and since June 3, 2008, the stations have not had a valid license to broadcast copyrighted work in ASCAP's repertory. Compl. ¶ 17; Suppl. Delbove Decl. ¶ 3.

On July 3, 2008, ASCAP hired an investigator, Ann Lillemoen, to tape record broadcasts on KEYL and KXDL. Suppl. Delbove Decl. ¶ 4. Lillemoen made tape recordings on July 14 and from July 18 to July 19. *Id.* She sent the recordings to ASCAP, and an employee of ASCAP's Radio Distribution Department listened to them and identified several copyrighted songs in ASCAP's repertory that were broadcast on KEYL and KXDL. *Id.* ¶¶ 4-5. Specifically, on July 14, 2008, six copyrighted songs were broadcast on KXDL ("What a Wonderful World"; "Get Ready"; "The Heart of Rock and Roll"; "Unchained Melody"; "You May Be Right"; and "Does Anybody Really Know What Time It Is?"). Compl. Schedule A; Suppl. Delbove Decl. ¶ 6. And on July 19, 2008, one copyrighted song was broadcast on KEYL ("You Move Me"). Compl. Schedule A; Suppl. Delbove Decl. ¶ 6.

In broadcasting these songs without a license on radio stations that they controlled, defendants infringed plaintiffs' copyrights in violation of 17 U.S.C. § 501. Plaintiffs brought this action on March 11, 2009, and defendants were served with the summons and complaint. Docket Nos. 3-5. Counsel for defendants entered an appearance on May 1, 2009, but defendants did not answer or otherwise respond to the complaint, and the clerk entered a default against defendants on May 18, 2009. Docket No. 12. The Court subsequently granted the motion of defendants' counsel to withdraw. Docket No. 30.

Because defendants are in default, the Court takes the allegations of the complaint as true. Given that defendants' infringement occurred in the face of warnings from ASCAP, and given that plaintiffs could have avoided infringement by renewing their license with ASCAP, the Court finds that plaintiffs should recover attorney's fees and costs and substantial statutory damages, and that plaintiffs are entitled to an injunction as set forth below. *See* 17 U.S.C. §§ 502, 504, 505.

Accordingly, based on the foregoing and on all of the files, records, and proceedings herein, plaintiffs' motion for entry of default judgment [Docket No. 15] is GRANTED.

IT IS HEREBY ORDERED THAT:

1. Plaintiffs shall recover the sum of \$55,783.74 from defendants, which represents \$52,500 in statutory damages pursuant to 17 U.S.C. § 504(c)(1) and \$3,283.74 in costs and attorney's fees pursuant to 17 U.S.C. § 505.
2. Defendants are PERMANENTLY ENJOINED from publicly performing any copyrighted work in the ASCAP repertory, whether the work exists now or is created later, on KEYL in Long Prairie, Minnesota, on KXDL-FM in Browerville, Minnesota, or on any other radio station owned, controlled, or operated by defendants. This order is binding on defendants and on other parties as specified in Fed. R. Civ. P. 65(d)(2).

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 3, 2009

s/Patrick J. Schiltz  
Patrick J. Schiltz  
United States District Judge